Supreme Court, U. S.
FILED
JUN 14 1945
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 110.

CHASE SECURITIES CORPORATION, NOW KNOWN AS AMEREX HOLDING CORPORATION, *Appellant*,

vs.

(RUTH CHASE DONALDSON), FRANK A. DONALDSON AND FRANK A. DONALDSON, JR., EXECUTORS OF THE ESTATE OF RUTH CHASE DONALDSON, DECEASED, SUBSTITUTED AS RESPONDENTS, *Appellees*.

APPEAL FROM THE SUPREME COURT OF MINNESOTA.

PETITION FOR REHEARING

And

MOTION FOR STAY OF MANDATE

HENRY ROOT STERN,
FREDERICK H. STINCHFIELD,
SAMUEL S. JENNINGS, JR.,
Counsel for Appellant.

JOHN M. PALMER,
FLOYD E. NELSON,
Of Counsel.

Hayward Hoel Co., 319 So. Seventh St., Minneapolis 15, Minn.

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APPEAL FROM THE SUPREME COURT OF MINNESOTA.

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MOTION FOR STAY OF MANDATE

Appellant respectfully requests that it be granted a rehearing upon the opinion of the Court rendered herein on May 21, 1945, for the following reasons:

1. That this Court erred in considering and deciding the case as though there had been no final adjudication by the Minnesota Supreme Court on the claim for breach of statute, prior to the enactment of the 1941 limitations law, and, as a corollary thereto;

2. That this Court erred in concluding that the state court did not consider and decide the claim for breach

of the registration statute as a separate cause of action, and that such cause was not finally adjudicated;

3. That this Court erred in interpreting Minnesota law as meaning that breach of the registration statute and fraudulent misrepresentations in the sale of securities gave rise to a single common law cause of action in tort;

4. That this Court erred in concluding that such cases as *Baltimore Steamship Co. vs. Phillips*, 274 U. S. 316; 321; *New York Central R. R. vs. Kinney*, 260 U. S. 340, 346; *Seaboard Air Lines Ry. Co. vs. Koennecke*, 239 U. S. 352, 354, and *Fuder vs. Oregon Short Line R. R.*, 131 Minn. 317, are relevant to this case;

5. That this Court erred in concluding that statutes of limitations are not entitled to logical treatment in the law and that there can be a "right" where the "remedy" for its enforcement no longer exists;

6. That this Court erred in concluding that the stated public policy underlying statutes of limitation is not sufficiently "fundamental" to warrant the protection of the due process clause; and,

7. That this Court erred in concluding that statutes of limitation may be altered constitutionally by legislatures, even long after expiration of the originally prescribed period for suit.

Appellant submits that this Court overlooked or ignored certain matters of procedural history in this case and of law which, fully considered, should have resulted in a reversal of the judgment, more particularly on the question of prior final adjudication, and also on the broader question of legislative revival of causes of action long barred under existing law.

1.

It is evident that the assumption of "pending litigation" permeated the entire consideration of both of the major issues decided.

The error of this assumption is made apparent in the decision from which this appeal arose. There, in the second paragraph (R. 403), the state court said of its first adjudication:

> "On appeal, this court held that the general six year statute had run against plaintiff . . . ."

and, in the next to the final paragraph, said that the 1941 law

> "was passed subsequent to a determination by this court that the cause was barred" (R. 408-409).

It is beyond fair argument that the only "cause" that was before the State Supreme Court on the first appeal was the only one which had been decided by the trial court, namely, the "cause" based solely upon a violation of the registration statute and entirely "independent" of the fraud claim. If that appeal decided that the limitations statute "had run against plaintiff" and constituted "a determination by this court that the cause was barred," a final and separate adjudication of the cause that was before that court must have resulted. Even this Court's comment on the first appeal (paragraph 7):

> "The Supreme Court had confined its reversal to one question—whether the defendant's withdrawal from the state tolled the running of the statute of limitations."

acknowledges the finality of the adjudication that the "running" had not been tolled and, therefore, that the cause of action before that court was barred.

This Court's later conclusion (paragraph 8) that the "liability for statutory violation . . . was (not) finally or sepa-

rately adjudicated" is a non-sequitur, explainable as a misunderstanding of the precise character of the action and of the long procedural history. This Court overlooked the true legal effect of the first appeal, as declared by the highest state court, when it based its decision on the proposition that this was not a case "where a defendant's statutory immunity from suit had been finally adjudged so that legislative action deprived it of a final judgment in its favor," and when it said that the change of policy as to limitations could be constitutionally effected by the legislature because it occurred "before final adjudication."

This error is not one of general principle but of procedural fact, one which this Court should be disposed to correct, consistent with the undisputed record in the case.

Additional phases of this general ground of crucial error are set forth in succeeding grounds.

2.

This Court's conclusion that the state courts did not consider and decide the statutory claim as a separate cause of action is contrary to its own brief statement of the long procedural history of the case and to undisputed record facts.

This Court has noted that the first trial court held the action for violation of the Blue Sky Law to be one "upon a liability created by statute" and that it did not "pass on the fraud issues." But it erred in not also noting that the findings, conclusions and order for judgment of the trial court constituted a complete adjudication as to the statutory liability and that the trial judge expressly stated that his decision was not based on the "independent" claims of fraud. (R. 258; Appellant's Reply Brief, pp. 4-5).

This Court has noted that the State Supreme Court on the first appeal decided that the statute of limitations as to statu-

tory liability had not been tolled by appellant's absence from the state. This Court erred in not also noting that such appeal was upon all issues of statutory liability (whether there was a violation of the statute and whether the action was barred) and that a decision that limitations had not been tolled necessarily constituted a "determination . . . that the cause was barred," precisely as that court, on the second appeal said of its holding on the first appeal. From the very nature of the question of tolling, a reversal on that ground could have had no other legal effect. The limitations statute "had run." This Court's apparent view, that the result of the first appeal was merely a remanding of the case for retrial of the entire action, is contrary to reasonable inference from the state court decisions. It is patently contradicted by the State Supreme Court's own statement of what had been decided by the first appeal and by this Court's own statement of that adjudication (paragraph 7 of opinion).

The opinion also indicates an incomplete consideration of the procedural developments subsequent to the first appeal.

a. This Court failed to note that the appellees themselves believed the statutory claim had been finally adjudged against them. In their first motion, *before* the passage of the 1941 law, they moved only for findings on the question of fraud (R. 277-284). Not until *after* that law did they add a supplemental motion that their "cause of action" based upon illegal sale was "revived" by that law (R. 285-286).

b. This Court failed to note that, thereafter, the trial court itself clearly distinguished between that portion of the action relating to fraud and that portion relating to breach of statute in two respects: (1) There were separate findings as to each (paragraphs 16, 22-31, pertaining to fraud, and paragraphs 15 and 19, pertaining to violation of the

registration statute). A comparison of the findings on the second trial (R. 295-317) with the findings on the first trial which were expressly restricted to the breach of statute claim (R. 244, 259) shows the precise difference and the complete separateness of the two phases of the case. (2) Entirely different limitations statutes were applied to the separate claims. The general fraud-limitations statute, Section 9191, was applied by the trial court to the claim of fraud, and the new 1941 law was applied by the trial court to the claim of statutory breach (Finding XXXII, R. 313-314). Had there been only one cause of action, only one limitations statute would have been applied. Paragraph 5 of the opinion erroneously assumed that the trial court applied the 1941 limitations act to the entire action, an error arising from apparently another erroneous assumption made in paragraph 4 of the opinion (fifth sentence) that the 1941 act denied securities purchasers of the benefit of the general fraud limitations statute under which the time for commencing suit runs from the date of discovery (Sec. 9191, *Minn. Stat.*).

Appellees, in their final brief in the state court on the second appeal, themselves recognized the complete separateness of the two causes of action (Appellant's Reply Brief in this Court, p. 2, footnote 1).

This Court's failure to understand fully the distinction which the trial court twice made, between the entirely separate claims and the resulting applicability of entirely different limitations statutes to each of them, contributed further to the erroneous conclusion that the state courts treated the case as involving only a single common law cause of action.

c. This Court did note that the State Supreme Court on the second appeal reached its decision, not on the fraud phase of the case, but on appellant's failure to register the security. But it failed to note that this was the *third time* that the

state courts had decided the case on what the original trial court declared to be the "independent" ground of statutory liability. In all three adjudications, it was as though the fraud claim had never been made in the case. We submit that nothing the state courts could have said or done would have made the separateness of the two causes more clear.

3.

This Court also erred in its interpretation of the Minnesota law. The Drees case[1] held that the illegal sale supports a common law action in tort (as distinguished from one in contract) for violation of the registration statute *only*, just as the Minnesota courts previously had held in the *Vercellini* and *Webster* cases.[2] It did not hold or suggest that the plaintiff might combine in such cause of action an entirely separate cause of action for common law fraud, and thereby merge them into one cause of action.

On the contrary, the leading Minnesota case of *Olesen vs. Retzlaff*, 184 Minn. 624, which this Court seemingly overlooked, carefully drew a sharp distinction between a tort action predicated on breach of a duty created by statute and a tort action predicated upon common law fraud. That opinion said:

> "To make a cause of action [for breach of statute] it was not necessary to allege actual fraud or fraud which conceivably might be actionable at common law. * * * A violation of the statute gives the right of action. Nothing more is necessary if damage accrues. * * * Simple disobedience to the statute brings liability without the existence of other wrongdoing. * * *
>
> "There is no such action as this at common law. * * * We hold that an action which is based alone on section

[1] Drees vs. Minnesota Petroleum Co., 189 Minn. 608.

[2] Vercellini vs. U. S. L. Realty Co., 158 Minn. 72; Webster vs. U. S. L. Realty Co., 170 Minn. 360.

10407" (bank directors liability statute) is not an action to recover on the ground of fraud within section 9191 (6) (limitations governing fraud actions)."

* * * * * * * * * * *

"That there may be actual and actionable fraud justifying a recovery, apart from the statute, and within the meaning of section 9191 (6) is without much doubt." (This case was followed in *Burzinski vs. Kingon Investment Co.*, 192 Minn. 335, which involved the Blue Sky Law.)

The complaint in the *Olesen* case, as its record on appeal will show, contained no separate statement of the cause of action arising from violation of the statute, as distinguished from the cause of action for fraud. The allegations were intertwined as substantially as in the case at bar; yet the Minnesota court reached the conclusion that the cause of action for violation of statute was barred and that the cause of action for common law fraud was not barred regardless of that situation. It would indeed be strange if the form or labelling of paragraphs of a pleading, rather than its substance, could determine its legal character and effect. The Minnesota court has held to the contrary on several occasions, *e. g.*, *Dewing vs. Dewing*, 112 Minn. 316; *Bacich vs. Northland Transportation Co.*, 173 Minn. 538. This Court erred in attaching material significance to the fact that "no separate statement of the statutory cause of action is set out in the complaint in this case" (paragraph 8).

In the face of the well established principles of Minnesota law, it cannot be assumed that the use of the word "tort" by the State Supreme Court in the description of this action on the second appeal somehow merged the two separate causes into one. This separateness was recognized as a matter of law. It was carefully preserved by both parties and in the actions of the state courts at all stages of the litigation.

4.

In view of the three adjudications of the state courts solely on the claim of statutory breach (and the acknowledged lack of necessity to consider the "independent" claim of fraud), this Court erred in relying upon such cases as *Baltimore Steamship Co. vs. Phillips*, 274 U. S. 316, and *Tuder vs. Oregon Short Line R. R.*, 131 Minn. 317.

These decisions are inapplicable. Each expressly observed that the facts alleged and proved concerning the duty of care there involved were the same, and, for that reason, it was immaterial to recovery whether the duty was prescribed by federal or state statute or by common law. In all of these cases, the singleness of the cause of action arose out of the violation of the one duty of due care, whatever the basis of that duty might have been.[3]

In this case, on the other hand, all the state courts recognized that the facts as to violation of the registration law were different from the facts relating to the claimed fraud. Two separate duties were involved instead of the single duty of the cited cases. The State Supreme Court never did hold appellant liable for the violation of any duty as to fraud. It expressly declined to do so; yet it held appellant liable on the duty of registration.

[3] In **Seaboard Air Line R. Co. vs. Koennecke**, 239 U. S. 352, 354, this Court said: "The facts constituting the tort were the same, whichever law gave them that effect."

5, 6 and 7.

These grounds, relating to *Campbell vs. Holt*, are broader in scope and constitute matters largely of public policy. The opinion, we believe, shows inconsistent reasoning, with an overtone of apology for the conclusion that statutes of limitation have no logical place in our system of law, that they have a valid public purpose (but one which is not sufficiently "fundamental" as to be protected by the due process clause), and that such statutes may be the subject of legislative control even years after the cause of action has lapsed, although it is suggested that there might be some such manipulation as would create retroactive effects offensive to due process.

These observations overlook realities of public policy which this case presented to this Court and which at least two of its members pointedly recognized on the oral argument.

(a) Should the fiction of "a right without a remedy" be upheld by this Court?

(b) If a legislature is permitted to revive a cause of action barred by lapse of time, what are the limits upon legislative revival of a cause of action 10, 15 or 20 years old?

Counsel for appellees was unable to give sound answers to such questions at that time. The opinion of this Court admits their presence in the case but declines to face them squarely.

As to the first question, this Court concedes frankly (paragraph 13):

> "Admittedly it is troublesome to sustain as a 'right' a claim that can find no remedy for its invasion."

It states the two views on the subject, but adds, "We do not need to settle these arguments." But, the troublesome proposition refuses to be so easily shelved. Rather *Campbell*

vs. Holt, which this Court holds applicable to this case (paragraph 10); is approved on this very ground: that only the remedy had been cut off by the original limitations statute, and that the right continued so that the remedy could constitutionally be restored by retroactive legislation (paragraph 15). In other words, the opinion does in fact "settle these arguments" in favor of the fiction of the right without a remedy. The opinion is subject to no other reasonable interpretation.

This Court, seemingly contrary to its own expressed intent, has preferred to preserve this fiction in the face of a public policy followed consistently by this Court from *Bell vs. Morrison* (1828), 26 U. S. (1 Pet.) 351, 7 L. Ed. 174, to *Order of Railway Telegrapher's vs. Railway Express Agency* (1944), 321 U. S. 342, 63 S. Ct. 582, "that the right to be free of stale claims in time comes to prevail over the right to prosecute them," and in the face of the admission in the opinion that the concept is "troublesome" and the view of at least two members of the court on the oral argument that it amounts to a "playing with words."

For all practical purposes, the legal effect of legislative revival of a stale claim is as prejudicial to the property rights of the prospective defendant as the effect of legislative creation, retroactively, of a claim against the same defendant. At the oral argument, appellees' counsel was unable to draw any distinction at all in this situation. We doubt that this Court is prepared to say now that there is any reasonable distinction. See *Terre Haute and Indianapolis Rd. Co. vs. Indiana* (1904), 194 U. S. 579, 48 L. Ed. 1124; *Ettor vs. Tacoma* (1912), 228 U. S. 148, 57 L. Ed. 773; *Coombes vs. Getz* (1931), 285 U. S. 434, 76 L. Ed. 866.

As to the second question, the opinion but glances at the problem as to how far a legislature might go in retroactively reviving barred claims. At two points, this Court suggests

that there is some limit. There is said to be "a relatively large degree of legislative control" as to limitations statutes, and it is possible that limitations statutes "could be so manipulated that their retroactive effects would offend the Constitution." It is difficult to suppose a more flagrant exercise of legislative power than was used in the 1941 law. As applied to this case, the revival was enacted six years *after* the original six-year period had expired. If, as this Court has held, the law was general in purpose (footnote 5 of opinion), it in legal effect revived all claims for non-registration back to the first Minnesota Securities Law, enacted in 1917. For one year following July 1, 1941, such claims as had become barred as early a. 1923 could have been sued upon eighteen years after the limitations period had expired or twenty-five years after the transactions in question!

If the 1941 law did not exceed the undefined permissible degree of legislative control suggested, then state legislatures have virtually absolute control which is beyond the protection of the federal due process clause. If the decision stands, it will defeat the very public policy which this Court has approved as to limitations statutes for the past 125 or more years, it will plague the courts with interminable litigation, it will encourage legislatures to yield to special interest groups whose claims, just or unjust, have long been barred under all existing law, and it will create an uncertainty in law and business relationships of far greater harm than that resulting from constitutional protection of the bar to a cause of action.

If, as the opinion and common sense mutually suggest, there is some limit beyond which a legislature may not go in such matters, we ask, as did certain members of this Court on oral argument, where can that line be drawn? We submit that there is only one realistic and just answer, that which is predicated upon the principle that a limitations

statute, once the period has run, extinguishes the right as well as the remedy and that a right of defense, so accrued, is a vested right protected by the federal due process clause.

For these reasons, appellant respectfully requests that this petition be granted and that a rehearing be allowed. The two principal questions are important not only to appellant but as legal precedent of nation-wide consequence in all courts and legislatures and to all persons against whom long barred claims may now be legislatively revived without possibility of due process protection.

Appellant also requests that issuance of the mandate be stayed until decision upon this petition and, if favorable, until final action of this Court after rehearing, for the reason that the judgment involved is one for money, that it is covered by supersedeas bond, and that unless a stay is granted, payment of the judgment must be made and the case would thereby become moot, to the great prejudice of appellant.

Dated: June 14, 1945.

Respectfully submitted,

HENRY ROOT STERN,
FREDERICK H. STINCHFIELD,
SAMUEL S. JENNINGS, JR.,
Counsel for Appellant.

JOHN M. PALMER,
FLOYD E. NELSON,
Of Counsel.

CERTIFICATE OF COUNSEL

Frederick H. Stinchfield, being one of counsel for appellant in the above case, hereby certifies that the foregoing "Petition for Rehearing and Motion for Stay of Mandate" is presented in good faith and not for purposes of delay.

Dated: June 14, 1945.

FREDERICK H. STINCHFIELD.

SUPREME COURT OF THE UNITED STATES.

No. 110—October Term, 1944.

Chase Securities Corporation, now known as Amerex Holding Corporation, Appellant, vs. Frank A. Donaldson and Frank A. Donaldson, Jr., Executors of the Estate of Ruth Chase Donaldson, Deceased.	Appeal from the Supreme Court of the State of Minnesota.

[May 21, 1945.]

Mr. Justice Jackson delivered the opinion of the Court.

This appeal from a judgment of the Supreme Court of Minnesota attacks as violative of the Fourteenth Amendment a provision of the Minnesota statutes enacted as part of a general revision of the Minnesota Securities or Blue Sky Law. Its effect upon appellant was to lift the bar of the statute of limitations in a pending litigation, which appellant contends amounts to taking its property without due process of law.

This action was brought in state court in November, 1937, to recover the purchase price of "Chase units," sold by appellant in Minnesota to the appellee's testate August 10, 1929. The "units" had not been registered as required by the laws of that state. The action was based in part on illegality of the sale, but it also was grounded on common-law fraud and deceit. Defendant relied among other defenses on the statute of limitations. Plaintiff countered that the running of the statute had been suspended because defendant had withdrawn from the state and the statute did not run during its absence. The case was tried by the court without a jury. It found that there was a sale in violation of the Blue Sky Law, that the Minnesota 6-year statute of limitations applying to actions "upon a liability created by statute" governed the case but had been tolled by withdrawal of the appellant from the state in 1931. Judgment was therefore rendered for the purchase price adjusted for interest and dividends and the Court found it unnecessary to pass on the fraud issues.

The Supreme Court of Minnesota reversed.[1] It held by reference to a companion case[2] that the statute of limitations had not been tolled by the appellant's absence from the state because it had designated agents to receive service of process after its departure as required by statute. The case was remanded on January 10, 1941 without prejudice to further proceedings on "issues other than that of the tolling of the statute of limitations."

While proceedings were pending in the lower court, the legislature enacted a statute, effective July 1, 1941, which amended the Blue Sky Law in many particulars not pertinent here. The section in question added a specific statute of limitations applicable to actions based on violations of the Blue Sky Law[3] as to which there had been no provision except a general statute of

[1] Donaldson v. Chase Securities Corp., 209 Minn. 165.

[2] Pomeroy v. National City Co., 209 Minn. 155.

[3] The section reads:

"Other actions or prosecutions not limited.—No action shall be maintained for relief upon a sale of securities made in violation of any of the provisions of this act, or upon a sale of securities made in violation of any of the provisions of a registration thereof under this act, or for failure to disclose that the sale thereof was made in violation of any of the provisions of this act or in violation of any of the provisions of a registration thereof under this act, or upon any representation with respect to the registration or non-registration of the security claimed to be implied from any such sale, unless commenced within six years after the date on which said securities were delivered to the purchaser pursuant to such sale, provided that if, prior to the effective date of this section, more than five years shall have elapsed from the date of such delivery, then such action may be brought within a period of one year following such effective date, and provided further that no purchaser of a security otherwise entitled thereto shall bring any action for relief of the character above set forth who shall have refused or failed, within 30 days after the receipt thereof by such purchaser, to accept a written offer from the seller or from any person who participated in such sale to take back the securities in question and to refund the full amount paid therefor by such purchaser, together with interest on such amount from the date of payment to the date of repayment, such interest to be computed at the same rate as the fixed interest or dividend rate, if any, provided for in such securities, or, if no rate is so provided, at the rate of six per centum per annum, less in every case the amount of any income received by the purchaser on such securities. Any written offer so made to a purchaser of a security shall be of no force or effect unless a duplicate thereof shall be filed with the commissioner of securities prior to the delivery thereof to such purchaser.

"Nothing in this section, except as herein expressly set forth, shall limit any other right of any person to bring any action in any court for any act involved in or right arising out of a sale of securities or the right of the state to punish any person for any violation of law." Mason's Minn. St. 1941 Supp., §3096-24.

limitations. Under the former law the limitation on actions for fraud did not commence to run until its discovery. Under the new law, actions for failure to disclose non-registration or for misrepresentations concerning registration, or for falsity of representation implied from the fact of sale, all of which grounds were set up in this action, must be brought within six years of delivery of the securities. Aggrieved purchasers were therefore denied future benefit of suspension of the period of limitation during the time such frauds or grounds of action remained undiscovered. But it also was provided that where delivery had occurred more than five years prior to the effective date of the Act, which was the fact in this case, the action might be brought within one year after the law's enactment. The effect of this was to abolish any defense that appellant might otherwise have made under the Minnesota statutes of limitation.

Both appellant and appellee moved in the trial court, shortly after the Act became effective, for supplemental findings. Appellant asked findings in its favor on the theory that the action was barred, that the new Act was inapplicable, and that there was no proof of actual fraud. Appellee contended that the 1941 law applied and that by reason of it recovery was not barred. The trial court determined that the plaintiff was entitled to recover in tort both on the ground of an illegal sale and on the ground of common-law fraud and deceit; that plaintiff had not discovered the deception until shortly before the action was begun; that the provisions of the 1941 Act applied to the plaintiff's "cause of action, or any of the separate grounds of relief asserted by plaintiff," and operated to extend the time for the commencement of action thereon to July 1, 1942 and that plaintiff's action was therefore commenced within the time limited by the statutes of Minnesota. The appellant moved for amended findings and then for the first time raised the federal constitutional question that the statute, if applied so to lift the bar, deprived appellant of property without due process of law, in violation of the Fourteenth Amendment. Its motion was denied.

Appealing again to the Supreme Court of Minnesota, appellant among other things urged this federal constitutional question. The Supreme Court again did not reach decision of the fraud aspects of the case. It held that the Blue Sky Law required the securities to be registered and was violated by the sale; that the

action was one in tort to recover as damages the purchase price of unregistered securities sold in Minnesota; that the new limitations statute was applicable and had the effect of lifting any pre-existing bar of the general limitation statute and that in so doing it did not violate the due process clause of the Fourteenth Amendment. The court relied on *Campbell* v. *Holt*, 115 U. S. 620, saying, "We do not find that *Campbell* v. *Holt* has been reversed or reconsidered, and we regard it as sound law; and, certainly, so far as the federal constitution is concerned, it is binding on this court until reversed by the Supreme Court".[4] The judgment was therefore affirmed, rehearing was sought and denied,[5] and the case brought here by appeal.

As the case stood in the state courts it is not one where a defendant's statutory immunity from suit had been fully adjudged so that legislative action deprived it of a final judgment in its favor. The lower court had decided against appellant. The Supreme Court had confined its reversal to one question—whether the defendant's withdrawal from the state tolled the running of

[4] Donaldson v. Chase Securities Corp., 216 Minn. 269, 276.

[5] The petition for rehearing for the first time raised two questions also urged here, but which may be disposed of shortly.

1. That the Act in question violated the Fourteenth Amendment in denying equal protection of the law. Even if seasonably made, which is doubtful, (See American Surety Co. v. Baldwin, 287 U. S. 156) the claim is without merit. The statute on its face is a general one, applying to all similarly situated persons or transactions. It appears that a number of cases were involved. Among other litigations were Stern v. National City Co. (D. C. Minn.), 25 F. Supp. 948, aff'd, *sub nom.* City Co. of New York v. Stern, (C. C. A. 8th), 110 F. 2d 601, rev'd, 312 U. S. 666; Chase Securities Corp. v. Vogel, (C. C. A. 8th), 116 F. 2d 607, rev'd, 312 U. S. 666. These were remanded by this Court to the Circuit Court of Appeals "for further proceedings with respect to any question not determined by the Supreme Court of Minnesota" in the *Pomeroy* and *Donaldson* cases. Also in this class of cases was Shepard v. City Co. of New York, (D. C. Minn.), 24 F. Supp. 682. That the motivation for the Act may have arisen in a few cases or in a single case would not establish that a general act such as we have described would deny equal protection.

2. The claim that appellant was denied due process of law because it had no opportunity to submit testimony of legislators as to legislative intent appears to us frivolous. The state court has seen fit to draw inferences as to the intent of an act from its timing and from its provisions and from background facts of public notoriety. But that does not mean that the judgment must be set aside to afford a party the opportunity to call legislators to prove that the court's inferences as to intent were wrong. Statutes ordinarily bespeak their own intention, and when their meaning is obscure or dubious a state court may determine for itself what sources of extra-statutory enlightenment it will consult. Our custom of going back of an act to explore legislative history does not obligate state courts to do so, and there is nothing in the Constitution which by the widest stretch of the imagination could be held to require taking testimony from a few or a majority of the legislators to prove legislative "intent."

the statute of limitations. The case was returned to the lower court without prejudice to any other question.

Appellant, however, insists that it was sued upon two separate and independent causes of action, one being "upon a liability created by statute," and that its immunity from suit on that cause of action had been finally adjudicated. The argument is not consistent with the holdings of the state court. The Blue Sky Law imposes duties upon a seller of certain securities, but it does not expressly define a liability for their omission or create a cause of action in favor of a buyer of unregistered securities. The state courts, nevertheless, held that such an illegal sale will support a common-law action in tort. *Drees* v. *Minnesota Petroleum Co.*, 189 Minn. 608. And on the second appeal of this case the court said, "The action was brought in tort to recover as damages the purchase price of unregistered securities . . . . It also sought recovery on the ground of deceit based on misrepresentation, but, in view of our disposition of the case, we need not consider that phase of the case."[6] It is not uncommon that a single cause of action in tort will rest both on omission of a statutory duty and on common-law negligence; the two bases do not necessarily multiply the causes of action. Cf. *Baltimore Steamship Co.* v. *Phillips*, 274 U. S. 316, 321; *New York Central R. R.* v. *Kinney*, 260 U. S. 340, 346; *Seaboard Air Line Ry.* v. *Koennecke*, 239 U. S. 352, 354. This appears to be permitted by the law of Minnesota. *Tuller* v. *Oregon Short Line R. R.*, 131 Minn. 317, 318-19. It is true that the Supreme Court in disposing of the first appeal relied on a companion case in which it was said that "plaintiff must be considered to have sued 'upon a liability created by statute'."[7] The pleadings in the companion case are not before us. No separate statement of a statutory cause of action is set out in the complaint in this case. The state court did not dispose of the liability for statutory violation as a separate cause of action by dismissal or otherwise. We cannot say that it was finally or separately adjudicated. The state courts seem to have treated the complaint as setting up several bases for a single common-law cause of action in tort which had been remanded for retrial at the time the new statute was enacted. We must regard it in that same light.

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[6] Donaldson v. Chase Securities Corp., 210 Minn. 269, 270-71.

[7] Pomeroy v. National City Co., 209 Minn. 155, 156.

The substantial federal questions which survive the state court decision are whether this case is governed by *Campbell* v. *Holt* and if so, whether that case should be reconsidered and overruled.

In *Campbell* v. *Holt*, *supra*, this Court held that where lapse of time has not invested a party with title to real or personal property, a state legislature, consistently with the Fourteenth Amendment, may repeal or extend a statute of limitations, even after right of action is barred thereby, restore to the plaintiff his remedy, and divest the defendant of the statutory bar. This has long stood as a statement of the law of the Fourteenth Amendment, and we agree with the court below that its holding is applicable here and fatal to the contentions of appellant.[8]

Appellant asks that in case we find *Campbell* v. *Holt* controlling it be reconsidered and overruled. We are reminded that some state courts have not followed it in construing provisions of their constitutions similar to the due process clause.[9] Many have, as they are privileged to do, so interpreted their own easily amendable constitutions to give restrictive clauses a more rigid interpre-

[8] Appellant invokes the principle of our decisions in William Danzer & Co. v. Gulf & Ship Island R. R., 268 U. S. 633, and Davis v. Mills, 194 U. S. 451. But the state court so construed the relationship between its limitation acts and the state law creating the asserted liability as to make these cases inapplicable, and we do not think it did so improperly. In the *Danzer* case it was held that where a statute in creating a liability also put a period to its existence, a retroactive extension of the period after its expiration amounted to a taking of property without due process of law. Read with the *Danzer* case, Davis v. Mills stands for the proposition that the result may be the same if the period of limitation is prescribed by a different statute if it "was directed to the newly created liability so specifically as to warrant saying that it qualified the right." 194 U. S. 454. But the situation here plainly does not parallel that in the *Danzer* case, and the state court whose province it is to construe state legislation has found no parallel to the *Davis* case. At the time this action was commenced the Blue Sky Law of Minnesota had imposed on appellant a duty; it had not explicitly created a liability. The liability was implied by the state's common law; the period of limitation was found only in the general statute of limitations enacted many years earlier. The state court concluded that the challenged statute did not confer on appellees a new right or subject appellants to a new liability. It considered that the effect of the legislation was merely to reinstate a lapsed remedy, that appellant had acquired no vested right to immunity from a remedy for its wrong in selling unregistered securities, and that reinstatement of the remedy by the state legislature did not infringe any federal right under the Fourteenth Amendment, as expounded by this Court in Campbell v. Holt.

[9] Wasson v. State, 187 Ark. 537; Bussey v. Bishop, 169 Ga. 251; Board of Education v. Blodgett, 155 Ill. 441; Jackson v. Evans, 184 Ky. 748; Wilkes County v. Forester, 204 N. C. 163; Raymer v. Comley Lumber Co., 169 Okla. 576; Cathey v. Weaver, 114 Tex. 513; Re Swan, 95 Utah 408; Eingartner v. Illinois Steel Co., 105 Wis. 373.

tation than we properly could impose upon them from without by construction of the federal instrument which is amendable only with great difficulty and with the cooperation of many States.

We are also cited to some criticisms of *Campbell* v. *Holt* in legal literature.[10] But neither in volume nor in weight are they more impressive than has been directed at many decisions that deal with controversial and recurrent issues.

Statutes of limitations always have vexed the philosophical mind, for it is difficult to fit them into a completely logical and symmetrical system of law. There has been controversy as to their effect. Some are of opinion that like the analogous civil law doctrine of prescription[11] limitations statutes should be viewed as extinguishing the claim and destroying the right itself. Admittedly it is troublesome to sustain as a "right" a claim that can find no remedy for its invasion. On the other hand, some common-law courts have regarded true statutes of limitation as doing no more than to cut off resort to the courts for enforcement of a claim.[12] We do not need to settle these arguments.

Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost. *Order of Railroad Telegraphers* v. *Railway Express Agency*, 321 U. S. 342, 349. They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and unavoidable delay. They have come into the law not through the judicial process but through legislation.[13] They represent a public policy about the privilege to litigate. Their shelter has never been regarded as what now is called a "fundamental" right or what used to be called a "natural" right of

[10] Appellant cites 2 Lewis' Sutherland, Statutory Construction (2d ed. 1904) § 768, p. 1288; 1 Wood, Limitations (4th ed. 1916) § 11, pp. 47-49; 24 Col. Law Rev. 803 (1924); 10 Corn. L. Q. 212 (1925); 2 Geo. Wash. Law Rev. 100 (1933); Bottschafer, Constitutional Law (1939) § 252, pp. 548-9.

[11] See La. Civ. Code, Arts. 3457-3459; Billings v. Hall, 7 Cal. 1, 4; Goddard's Heirs v. Urquhart, 6 La. 659, 673.

[12] See Gilbert v. Selleck, 93 Conn. 412; In re Daniel's Estate, 208 Minn. 420; Ruhs v. Cullum, 177 Pa. 633.

[13] For history of these acts see Atkinson, "Some Procedural Aspects of the Statute of Limitations", 27 Col. Law Rev. 157 (1927).

the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control.

This Court, in *Campbell* v. *Holt*, adopted as a working hypothesis, as a matter of constitutional law, the view that statutes of limitation go to matters of remedy, not to destruction of fundamental rights. The abstract logic of the distinction between substantive rights and remedial or procedural rights may not be clear-cut, but it has been found a workable concept to point up the real and valid difference between rules in which stability is of prime importance and those in which flexibility is a more important value. The contrast between the acceptable result of the reasoning of *Campbell* v. *Holt* and its rather unsatisfactory rationalization was well pointed out by Mr. Justice Holmes when as Chief Justice of Massachusetts he wrote:

"Nevertheless in this case, as in others, the prevailing judgment of the profession has revolted at the attempt to place immunities which exist only by reason of some slight technical defect on absolutely the same footing at those which stand on fundamental grounds. Perhaps the reasoning of the cases has not always been as sound as the instinct which directed the decisions. It may be that sometimes it would have been as well not to attempt to make out that the judgment of the court was consistent with constitutional rules, if such rules were to be taken to have the exactness of mathematics. It may be that it would have been better to say definitely that constitutional rules, like those of the common law, end in a penumbra where the Legislature has a certain freedom in fixing the line, as has been recognized with regard to the police power. *Camfield* v. *United States*, 167 U. S. 518, 523, 524. But however that may be, multitudes of cases have recognized the power of the Legislature to call a liability into being where there was none before, if the circumstances were such as to appeal with some strength to the prevailing views of justice, and if the obstacle in the way of the creation seemed small. *Dunforth* v. *Groton Water Co.*, 178 Mass. 472, 476. This statement was approved and followed by the New York Court of Appeals in *Robinson* v. *Robins Dry Dock and Repair Co.*, 238 N. Y. 271.

The essential holding in *Campbell* v. *Holt*, so far as it applies to this case, is sound and should not be overruled. The Four-

teenth Amendment does not make an act of state legislation void merely because it has some retrospective operation. What it does forbid is taking of life, liberty or property without due process of law. Some rules of law probably could not be changed retroactively without hardship and oppression, and this whether wise or unwise in their origin. Assuming that statutes of limitation like other types of legislation could be so manipulated that their retroactive effects would offend the Constitution, certainly it cannot be said that lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time is *per se* an offense against the Fourteenth Amendment. Nor has the appellant pointed out special hardships or oppressive effects which result from lifting the bar in this class of cases with retrospective force. This is not a case where appellant's conduct would have been different if the present rule had been known and the change foreseen. It does not say, and could hardly say, that it sold unregistered stock depending on a statute of limitation for shelter from liability. The nature of the defenses shows that no course of action was undertaken by appellant on the assumption that the old rule would be continued. When the action was commenced, it no doubt expected to be able to defend by invoking Minnesota public policy that lapse of time had closed the courts to the case, and its legitimate hopes have been disappointed. But the existence of the policy at the time the action was commenced did not, under the circumstances, give the appellant a constitutional right against change of policy before final adjudication. Whatever grievance appellant may have at the change of policy to its disadvantage, it had acquired no immunity from this suit that has become a federal constitutional right. The judgment is affirmed.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.